



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 16, 1998

Ms. Susan M. Cory  
General Counsel  
Texas Workers' Compensation Commission  
Southfield Building, MS-4D  
4000 South IH-35  
Austin, Texas 78704-7491

OR98-0719

Dear Ms. Cory:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113392.

The Texas Workers' Compensation Commission (the "commission") received a request for "a copy of the Texas Commission on Human Rights final report on their investigation into sexual harassment complaints at TWCC." You contend that this report is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test articulated under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Accordingly, we will consider your section 552.101 and section 552.102 claims together.

For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 683-85 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). According to *Industrial Foundation*, information is protected by the doctrine of common-law privacy if (1) the information contains highly

intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685.

The requested report resulted from a Texas Commission on Human Rights ("TCHR") pattern and practice investigation of the commission regarding allegations of sexual harassment dating back to 1990. The report briefly summarizes several incidents of sexual harassment, but does not identify the victims of or witnesses to the incidents. Therefore, we do not believe that publicly disclosing the report will violate the common-law privacy interests of the victims or witnesses. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). Furthermore, the public has a legitimate interest in the report. *Id.* at 525 (court found public had legitimate interest in basic facts about sexual harassment incident); Open Records Decision Nos. 473 (1987) (public has legitimate interest in job performance of public employees), 470 (1987) (public employee's job performance does not generally constitute his private affairs). Thus, we conclude that the report is not excepted from disclosure under sections 552.101 and 552.102 of the Government Code.

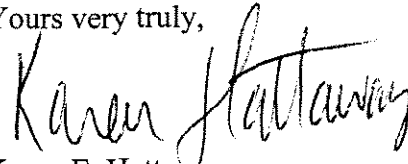
Section 21.304 of the Labor Code prohibits an officer or employee of the TCHR from disclosing to the public information obtained by the TCHR while investigating an allegation of an unlawful employment practice except as necessary to carry out its responsibilities under chapter 21 of the Labor Code. You claim that the commission obtained the requested report from the TCHR through an interagency transfer, and that, therefore, section 21.304 also prohibits the commission from disclosing the report to the public. We disagree.

We have consistently held that information may be transferred between governmental agencies which are subject to the Open Records Act without destroying the confidential nature of the information. *See, e.g.,* Open Records Decision No. 655 (1997) at 8. Our decisions upholding interagency transfers are grounded in the well settled policy of the state that state agencies should cooperate with each other in the interest of efficient and economical administration of their statutory duties. *Id.* However, the "transfer" of the report from the TCHR to the commission was not voluntary. The TCHR was compelled by law to provide the commission with a copy of the report. *See* Labor Code § 21.305 (TCHR shall adopt rules allowing party to employment discrimination complaint access to TCHR); Open Records Decision No. 534 (1989) at 6-8 (construing statutory predecessor to Labor Code section 21.305). For these reasons, we conclude that the "transfer" of the report from the TCHR to the commission does not constitute an interagency transfer made for the purpose of interagency cooperation. Thus, Labor Code section 21.304 does not prevent the commission from releasing the report under the Open Records Act. We find that the report is not excepted from disclosure pursuant to section 552.101 or section 552.102 of the Government Code. Therefore, the commission must release the report to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Karen Hattaway". The signature is fluid and cursive, with the first name "Karen" and last name "Hattaway" clearly distinguishable.

Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 113392

Enclosures: Submitted documents

cc: Mr. Brian Collister  
Investigative Reporter  
KTBC-TV  
119 East 10<sup>th</sup> Street  
Austin, Texas 78701  
(w/o enclosures)